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Excelsior Golden Living Center and Service Employees International Union Healthcare Minnesota (Local 113)

GGNSC St. Paul Ridge LLC, d/b/a Golden Living Center—Lake Ridge Health Care Center and Service Employees International Union Healthcare Minnesota (Local 113). Cases 18–CA– 081449 and 18–CA–081459

January 9, 2013

## DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN AND BLOCK

Pursuant to charges filed on May 21, 2012, by the Service Employees International Union Healthcare Minnesota (Local 113) (the Union), the Acting General Counsel issued a complaint on June 13, 2012, alleging that Excelsior Golden Living Center and Golden Living Center—Lake Ridge Health Care Center (the Respondents) violated Section 8(a)(5) and (1) of the Act by unilaterally ceasing to honor employees' dues-checkoff authorizations after the expiration of the Respondents' collective-bargaining agreements with the Union. The Respondents filed an answer, admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On July 13, 2012, the Acting General Counsel filed with the National Labor Relations Board a Motion for Summary Judgment and a brief in support, arguing that the Board should overrule *Bethlehem Steel Co.*, 136 NLRB 1500 (1962), affd. in relevant part sub nom. *Marine & Shipbuilding Workers v. NLRB*, 320 F.2d 615 (3d Cir. 1963), cert. denied 375 U.S. 984 (1964), and find that the Respondents violated the Act as alleged in the complaint. On July 23, 2012, the Respondents filed a cross-motion for summary judgment and a brief in support, arguing that the Respondents are entitled to summary judgment as a matter of law. On September 5, 2012, the Board issued a Notice to Show Cause why either motion should not be granted, and the Respondents filed a response.

Ruling on the Motions for Summary Judgment

The sole issue in this proceeding is whether the Respondents violated Section 8(a)(5) and (1) by discontinuing dues checkoff following the expiration of the parties' collective-bargaining agreements. The Respondents contend that, under *Bethlehem Steel* and its prog-

eny, the obligation to deduct dues and remit them to the Union did not survive the expiration of the collective-bargaining agreements, and the Respondents were therefore privileged to unilaterally discontinue honoring the dues-checkoff arrangements. The Acting General Counsel requests that the Board overrule *Bethlehem Steel* and find that the Respondents violated the Act as alleged in the complaint.

In *WKYC-TV*, 359 NLRB No. 30 (2012), the Board overruled *Bethlehem Steel* and its progeny "to the extent they stand for the proposition that dues checkoff does not survive contract expiration." Id. slip op. at 8. The Board held in *WKYC-TV* that "an employer, following contract expiration, must continue to honor a dues-checkoff arrangement established in th[e] contract until the parties have either reached agreement or a valid impasse permits unilateral action by the employer." Id. The Board also decided, however, to apply the new rule only prospectively. Id. slip op. at 9. Therefore, as in *WKYC-TV*, we shall apply *Bethlehem Steel* in the present case.

There is no dispute that the Respondents' conduct was lawful under *Bethlehem Steel*. Accordingly, because there is no genuine dispute as to any material fact, we grant the Respondents' cross-motion for summary judgment and deny the Acting General Counsel's motion.

## **ORDER**

The Acting General Counsel's Motion for Summary Judgment is denied.

The Respondents' cross-motion for summary judgment is granted, and the complaint is dismissed.

Dated, Washington, D.C. January 9, 2013

Mark Gaston Pearce,	Chairman
Richard F. Griffin, Jr.,	Member
Sharon Block,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD